IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1917 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANBHAI MULJIBHAI HARIJAN

Versus

ELECON ENGINEERING COMPANY

Appearance:

1. Special Civil Application No. 1917 of 2000

MR GIRISH M DAS for Petitioner No. 1

MR GM JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/04/2005

C.A.V. JUDGEMENT

By way of filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has

challenged the order dtd.13/12/1999 passed by the Assistant Labour Commissioner, Nadiad in Conciliation Case No.473 of 1999 (Annexure-A) denying to make a Reference on the ground that there is no relationship of employee and employer between the parties.

2. Learned counsel for the petitioner has mainly argued that the petitioner was appointed by the respondent company on 1/9/1987 and he was given the work of Sweeper-cum-Peon. Initially the petitioner was discharging his duties at Company's guest house, but subsequently after one year, the petitioner was transferred to the Director's Bungalow. It is also argued that everyday the attendance of the petitioner was taken by watchman at the factory guest house when he was working at the factory guest house and thereafter, the company's officers were taking signature of the petitioner on muster rolls and accordingly, wages were paid to the petitioner. It is further argued that on 12/4/1999, the respondent company ordered for uniforms for workmen and gave a contract to Delight Suiting and Shirtings, Mota Bazar, Vallabh Vidhyanagar, to prepare the uniforms and authority letters were given by the respondent company to the workmen and the petitioner was also given an authority letter on 12/4/1999, copy of which is annexed at Annexure-B to the petition. It is also argued that the petitioner discharged his duties upto 17/7/1999 but thereafter, he was not permitted to work and without assigning any reason and without following any procedure, the services of the petitioner were terminated illegally and hence the petitioner approached the Assistant Labour Commissioner, Nadiad by way of filing Conciliation Proceedings and pointed out all the aspects, but the Assistant Labour Commissioner has passed the erroneous order which is impugned in this petition, relying on the contentions raised by the respondent company that the petitioner was a domestic servant and not the employee of the respondent Company.

3. Learned counsel for the petitioner has further argued that whether the petitioner is a workman of the company or not, can be decided by the Labour Court only and the Government - Asst.Labour Commissioner has no jurisdiction to go into the merits of the dispute and decide and adjudicate the same.

4. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court in the case of Telco Convoy Drivers Mazdoor Sangh and & Anr. Vs. State of Bihar and Ors., delivered in Civil Appeal No.2534 of 1989, decided on April 28, 1989. In the said

decision the Hon'ble Apex Court has held as under;-

> "13. Attractive though the contention is, we regret, we are unable to accept the same. It is now settled law, while exercising powers under section 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi judicial function and that in performing this administrative function, the government cannot delve into the merits of the dispute and take upon itself the determination of the list, which would certainly be en excess of the power conferred on it by Sec.10 of the Act. (See Ram Avtar Sharma v. State of Haryana 1985 (3) SCC 189, M.P. Irrigation Karmachari Sangh V. State of M.P., 1985 II CLR 10, Shambhu Nath Goyal v. Bank of Baroda, Jullundur, 1978 (2) SCC 353."

5. Heard Mr.G.M. Joshi, learned counsel for the respondent No.1. The respondent No.2 though served, has chosen not to oppose this petition. Mr.GM Joshi, learned counsel for the respondent No.1 has mainly argued that the petitioner has prayed reliefs against the appropriate government without joining it as party respondent and hence, no writ or direction as prayed for by the petitioner can be issued against the appropriate government. He, therefore, submitted that on this ground alone, the petition is required to be dismissed. In support of his contentions, he has placed reliance in the case of Secretary to the Govt. and Anr. Vs. M.Senthil Kumar, reported in (2005) 3 SCC 451 and in the case of Ram Avtar Sharma and ors. vs. State of Haryana and Anr. reported in AIR 1985 SC 915.

6. As the petitioner has not made appropriate Government as party, this court is not in a position to issue any direction against the appropriate Government and therefore, this Court has requested the learned counsel for the petitioner to join the appropriate Government as party so that this court can pass appropriate order. But the learned counsel for the petitioner has submitted that he don't want to join the appropriate Government as party and the petition may be decided as it is.

7. Having heard the learned counsel for the respective parties, and considering the facts and circumstances of the case, it is true that whether the

petitioner is a workman of the company or not, can be decided by the Labour Court only and the Asst. Labour Commissioner has no jurisdiction to decide and adjudicate the dispute. But in the present case, the petitioner has not joined the appropriate Government as party respondent and therefore, this court is not in a position to issue any order or direction against the appropriate Government and therefore, on this ground alone, this petition is required to be dismissed and the same is accordingly dismissed. Rule is discharged.

(Sharad D. Dave,J).